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7
8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 In re

Case No. 90-51900

Chapter 11

13 BENYAM MULUGETA and PAULA R.
14 MULUGETA

**NOTICE OF HEARING RE
DEBTORS' COMPROMISE OF
SECURED CLAIMS OF AMERICAN
LIBERTY INVESTMENTS, L.L.C.,
SUCCESSOR IN INTEREST TO
STERLING SAVINGS BANK**

15
16 Debtors.

17
18 Date: March 15, 2013
Time: 2:15 p.m.
Courtroom 3020
19 280 S. First Street
20 San Jose, California

21 **TO: CREDITORS, THE UNITED STATES TRUSTEE AND TO OTHER PARTIES**
22 **IN INTEREST**

23 **PLEASE TAKE NOTICE** that on March 15, 2013, at 2:15 p.m., a hearing
24 will be held before the Honorable Arthur S. Weissbrodt, United States Bankruptcy Judge,
25 in his courtroom 3020, located at 280 South First Street, San Jose, California, for the
26 approval of a stipulation between Benyam Mulugeta and Paula R. Mulugeta (collectively
27 the "Debtors") and American Liberty Investments, L.L.C. ("American Liberty"), the
28 successor to Sterling Savings Bank, resolving American Liberty's secured claim against

1 the Debtors' real property commonly referred to as 343 Grand Avenue, Oakland,
2 California (the "Grand Property"). The Debtors' stipulation with American Liberty is made
3 and based upon the following facts:

4 A. American Liberty holds a first priority deed of trust on the Grand Property
5 securing a claim asserted by American Liberty to be in excess of \$2,323,970.55. which
6 includes approximately \$301,026.19 of default interest owed by the Debtors under the
7 Grand Property loan documents (the "Grand Property Loan").

8 B. American also asserts that it has the right to the immediate entry of an order
9 granting it relief from the automatic stay to foreclose on the Grand Property and exercise
10 all of its rights and remedies under State law by virtue of the a prior Order Re Motion for
11 Relief From Stay of the Bankruptcy Court entered by the Court on August 21, 2009 as
12 Docket No. 124 (the "Adequate Protection Order").

13 C. Debtors' dispute American Liberty's right to recover default interest and
14 further assert that they can cure their default under the Adequate Protection Order.

15 D. Debtors further assert that the Grand Property can be sold for approximately
16 \$2,700,000 less costs of sale. However, if American Liberty's secured claim is allowed in
17 full, then there would be no proceeds from such a sale remaining after payment to America
18 Liberty.

19 E. Rather than engage in potentially lengthy and expensive litigation over the
20 secured claims of American Liberty, and so as to ensure the estate receives some value
21 from the Grand Property, Debtors and American Liberty have stipulated on the record to a
22 resolution of these disputes. The terms of the Debtors' stipulation are as follows:

23 1. Debtors' stipulate to the entry of an order immediately granting relief
24 from the automatic stay to American Liberty to foreclose upon the Grand Property and to
25 exercise all of its rights and remedies under the Grand Property Loan documents and
26 applicable State law;

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1 2. Debtors' shall cooperate in the immediate turnover of the possession
2 and control over the Grand Property to American Liberty after the entry of the order
3 granting relief from stay, including without limitation turning over all rental agreements,
4 accountings and property disclosures;

5 3. Upon turning over possession of the Grand Property along with all
6 rental agreements, accountings and property disclosures to American Liberty, American
7 Liberty shall wire transfer to the Debtors' "debtor-in-possession" account, the total sum of
8 One Hundred Thousand Dollars (\$100,000) .

9 4. Upon the entry of the order approving the parties stipulation, and
10 granting relief from stay to American Liberty, on the one hand, and American Liberty, on
11 the other, shall release each other and all of their respective past, present, and future parent
12 and affiliated corporations and entities, owners, directors, officers, employees,
13 subsidiaries, agents, representatives, relatives, heirs, trust, beneficiaries, shareholders, alter
14 egos, attorneys, predecessors, successors, assigns, insurers, and underwriters, do hereby
15 settle, release, remise, discharge, and waive forever all claims, including all actual or
16 potential claims, debts, disputes, liabilities, obligations, rights, damages, injury or causes
17 of action, whether known or unknown, anticipated or unanticipated, suspected or
18 unsuspected, fixed or contingent which were or could have been asserted as arising from
19 the Grand Property Loan. This release of claims shall include a waiver under Section 1542
20 of the California Civil Code.

21 F. At the hearing on March 5, 2013, the Court directed that notice of the
22 hearing on the compromise between Debtors and American Liberty be provided to all
23 parties entitled to receive such notice.

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1 G. Debtors and American Liberty believe that their compromise should be
2 approved pursuant to the criteria established by the Ninth Circuit Court of Appeals in *In re*
3 *A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986).

4 **PLEASE TAKE FURTHER NOTICE** that the Court has determined that
5 responses, if any, to this Notice may be made at the hearing on March 15, 2013, at 2:15
6 p.m.

7 **WHEREFORE**, the Debtors and American Liberty respectfully request that the Court
8 enter an order:

- 9 1. Approving the compromise of American Liberty's secured claim on the terms set
10 forth on the record and outlined hereinabove pursuant to Bankruptcy Rule 9019;
11 2. Authorizing the Debtors to take such actions as may be necessary to implement the
12 compromise with American Liberty, including, without limitation, by executing such documents
13 as may reasonably be required; and
14 3. Granting such other and further relief as is just and proper under the circumstances.
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16 DATED: March 6, 2013

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

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18
19 By: 

20 SIMON ARON

Attorneys for American Liberty, L.L.C.